

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF ALABAMA
 SOUTHERN DIVISION

98 OCT 23 PM 2:53
 U.S. DISTRICT COURT
 N.D. OF ALABAMA

GREGORY A. VANSTONE)	
)	
Plaintiff,)	
)	
vs.)	Case No. CV 96-S-1476-M
)	
)	
ALABAMA DEPARTMENT OF)	<i>Entered</i> <i>CH</i>
CORRECTIONS; et al.,)	
)	
Defendants.)	OCT 23 1998

MEMORANDUM OPINION

The magistrate judge filed his second report and recommendation in the above-styled cause on October 5, 1998, after conducting a hearing on plaintiff's claim on reference from the undersigned. The second report and recommendation contains the magistrate judge's proposed findings of fact and conclusions of law. Plaintiff filed his objections to the report and recommendation on October 14, 1998.

Having carefully reviewed and considered de novo all the materials in the court file, including a transcript of the evidentiary hearing before the magistrate judge, the court is of the opinion that the report is due to be and the same is hereby ADOPTED and the recommendation is ACCEPTED. Plaintiff's objections

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to the report and recommendation are OVERRULED.¹ By a separate order, the court will enter final judgment in favor of defendants Lyrene and Correctional Medical Systems, Inc. and will dismiss this action with prejudice.

DATED this 23rd day of October, 1998.



U.S. DISTRICT JUDGE

¹ One of the objections raised is the assertion that the plaintiff never received the magistrate judge's original report and recommendation filed on May 27, 1997. The court file reflects that a copy of that report and recommendation was mailed to the plaintiff and not returned to the court; that an order granting partial summary judgment on the basis of that report and recommendation was mailed to the plaintiff and not returned to the court; and, that the magistrate judge conducted a pretrial conference with the plaintiff present and plaintiff never raised any question about not receiving the first report and recommendation. In any event, plaintiff's claim for injunctive relief to obtain surgery and for injunctive relief and damages against Correctional Medical Systems, Inc. were fully aired and heard during the evidentiary hearing conducted by the magistrate judge.